

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DIGITAL MEDIA SOLUTIONS, LLC,)	CASE NO. 1:19-cv-145
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
v.)	MAGISTRATE JUDGE
)	THOMAS M. PARKER
SOUTH UNIVERSITY OF OHIO, LLC)	
<i>et al.</i> ,)	
)	
Defendants.)	

**The Receiver’s Response to Tech Park 6, LLC’s Joinder to Motion of 3601
Sunflower LLC to Vacate the Injunction and Receiver Order [Doc. 97]**

As the Receiver reported to this Court before the March 8th status hearing (*see* Third Supplement to First Receiver Report at 2 [Doc. 120]) and during the March 8th status hearing, he has a deal in place with a buyer, Save the Art Institute of Las Vegas, Limited, to acquire the Art Institute of Las Vegas (“Ai Las Vegas”). Ai Las Vegas’s landlord is Intervenor Tech Park 6, LLC (“Tech Park”).

Tech Park moved this Court for “an order . . . compelling the Receiver to elect to assume or reject the Lease within 30 (thirty) days and in the interim, to pay all Rent contemplated under the Lease on a per diem basis from the commencement of the Receivership on January 18, 2019, forward.” Tech Park’s Joinder to Motion of 3601 Sunflower LLC to Vacate the Injunction and Receiver Order at 2 (Doc. 97) (describing Tech Park’s Motion to Expedite Decision to Assume or Reject Lease [Doc. 59]). Tech Park also joined 3601 Sunflower, LLC’s motion to vacate the Receivership Order. (Doc. 97).

On March 7, 2019,¹ Save the Art Institute of Las Vegas, Limited's manager spoke with one of Tech Park's principals. Declaration of William A. Turbay ¶ 6. Save the Art Institute of Las Vegas, Limited offered Tech Park, assuming Save the Art Institute of Las Vegas, Limited's deal with the Receiver is approved by this Court, to assume Ai Las Vegas's lease in full, pay the rent arrearage (excluding interest, penalties, late fees, and attorney fees) over a 24-month period. *Id.* ¶ 7. Tech Park responded that Save the Art Institute of Las Vegas, Limited's interest in assuming the lease was not acceptable. *Id.* ¶ 8.

"Should the landlord be unwilling to allow Save the Art Institute of Las Vegas, Limited to assume Ai Las Vegas's lease or, in the alternative, to negotiate a new lease agreement, then Save the Art Institute of Las Vegas, Limited cannot close any deal with the Receiver to acquire Ai Las Vegas." *Id.* ¶ 9.

Currently, 469 students attend Ai Las Vegas.

Tech Park has joined in a motion that seeks to vacate this receivership principally on the ground that this Court's equitable jurisdiction was not invoked. *See* (Doc. 97). But "he who comes into equity must come with clean hands." *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945). The Supreme Court has explained that "[t]his maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." *Id.* Thus, equitable defenses are only available to those with clean hands. *See United States v. Weintraub*, 613 F.2d 612, 619 (6th Cir. 1979).

¹ The Receiver only learned of this conversation yesterday, March 9, 2019.
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Tech Park does not have clean hands. On the one hand, it asks this Court vacate a federal equity receivership on the ground that this Court did not have equitable jurisdiction. On the other hand, it has rejected the Receiver and Save the Art Institute of Las Vegas, Limited's proposed deal to save Ai Las Vegas and provide continued education to Ai Las Vegas's 469 students. Tech Park's joinder to the motion to vacate should thus be disregarded by this Court.

Dated: March 10, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

The foregoing was electronically filed this 10th day of March, 2019. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

In addition, copies of the foregoing were sent via regular U.S. mail on this 10th day of March, 2019 to the following:

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